An official website of the United States government Here's how you know

U.S. Department of Education

Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

In responding to requests for technical assistance, the Office for Civil Rights (OCR) has determined that school officials would benefit from additional guidance concerning the effects of the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act) on public elementary and secondary programs. The following questions and answers provide this guidance.[1]

Q1: What disability-related Federal laws does OCR enforce?

A: OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department). Recipients of this Federal financial assistance include public school districts, other state and local educational agencies, and institutions of higher education.

OCR also enforces Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in state and local government services, programs, and activities (including public schools), regardless of whether they receive Federal financial assistance. Pursuant to a delegation by the Attorney G of the United States, OCR shares in the enforcement of Title II for all programs, servi

TOP

and regulatory activities relating to the operation of public elementary and secondary educational programs, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

Because Title II essentially extends the antidiscrimination prohibition embodied in Section 504 to all actions of State and local governments, the standards adopted in Title II are generally the same as those required under Section 504. *See* 28 C.F.R. § 35.103(a). Title II and its implementing regulations do not establish a lesser standard of protection than Section 504 does. *Id*. To the extent that Title II provides greater protection, covered entities must also comply with Title II's substantive requirements.[2]

This guidance focuses on Section 504 and Title II in the context of public elementary and secondary education programs.

Q2: What is the Amendments Act?

A: The Amendments Act was signed into law in September 2008 and became effective on January 1, 2009.[3] Congress passed the Amendments Act in part to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of a disability. As members of Congress explained, "The ADA Amendments Act rejects the high burden required [by the Supreme Court] and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended . . . ."[4]

The Amendments Act not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. 29 U.S.C. § 705(20)(B).[5] All persons covered by Section 504 or Title II are protected from discrimination under the general nondiscrimination regulatory provisions implementing these statutes, which cover program and physical accessibility requirements, as well as protection against retaliation and harassment. 28 C.F.R. pt. 35; 34 C.F.R. §§ 104.4, 104.21-23, 104.61 (incorporating 34 C.F.R. § 100.7(e)). The Amendments Act does not alter the school district's substantive obligations und

TOP

Section 504 or Title II. Rather, as discussed further in Q4, it amends the ADA and Section 504 to broaden the potential class of persons with disabilities protected by the statutes.

Q3: Does the Amendments Act alter the Individuals with Disabilities Education Act (IDEA)?

A: No. The Amendments Act amends only the ADA and, through a conforming amendment, Section 504. The Amendments Act does not amend the IDEA, and therefore does not affect that law's requirements. The IDEA provides Federal financial assistance to states, and through them to local educational agencies or school districts, to assist in providing special education and related services to eligible children with disabilities.[6] The IDEA is administered by the Department's Office of Special Education Programs. States must comply with a number of specific legal requirements to receive IDEA funds. In order to be eligible for services under the IDEA, a student must fall into one or more of the disability categories specified in the statute and must also be determined to need special education. 34 C.F.R. § 300.8. Students who meet the eligibility criteria under the IDEA are also covered by Section 504 and Title II if they have a disability as defined under those laws. However, coverage under Section 504 and Title II of the ADA is not limited to students who meet the IDEA eligibility criteria. If, for example, a student has a disability under Section 504 and the ADA but needs only related services to meet his or her educational needs as adequately as the needs of nondisabled individuals are met, the student is entitled to those services even if the student is not eligible for special education and related services under the IDEA.

Q4. How does the Amendments Act alter coverage under Section 504 and Title II?

A: The Amendments Act emphasizes that the definition of "disability" in Section 504 and the ADA should be interpreted to allow for broad coverage. Students who, in the past, may not have been determined to have a disability under Section 504 and Title II may now in fact be found to have a disability under those laws. A student whom a school district did not believe had a disability, and therefore did not receive, as described in the Section 504 regulation, special education or related services b[illegible] passage of the Amendments Act, must now be considered under these new lega[illegible]

TOP

standards. The school district would have to evaluate the student, as described in the Section 504 regulation, to determine if he or she has a disability and, if so, the district would have to determine whether, because of the disability, the student needs special education or related services. 34 C.F.R. §§ 104.3(l), 104.33.

Section 504 and the ADA define disability as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 U.S.C. § 705(9)(B); 42 U.S.C. § 12102(1). The Amendments Act does not alter these three elements of the definition of disability in the ADA and Section 504. But it significantly changes how the term "disability" is to be interpreted. Specifically, Congress directed that the definition of disability shall be construed broadly and that the determination of whether an individual has a disability should not demand extensive analysis. 42 U.S.C. § 12102 note. Among other changes, the Amendments Act specifies that:

- An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. *Id.*
- In the phrase "a physical or mental impairment that substantially limits a major life activity," the term "substantially limits" shall be interpreted without regard to the ameliorative effects of mitigating measures, other than ordinary eyeglasses or contact lenses. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). Mitigating measures are things like medications, prosthetic devices, assistive devices, or learned behavioral or adaptive neurological modifications that an individual may use to eliminate or reduce the effects of an impairment. These measures cannot be considered when determining whether a person has a substantially limiting impairment. Therefore, impairments that may not have previously been considered to be disabilities because of the ameliorative effects of mitigating measures might now meet the Section 504 and ADA definition of disability. For example, a student who has an allergy and requires allergy shots to manage that condition would be covered under Section 504 and Title II if, without the shots, the allergy would substantially limit a major life activity. (See also discussion of evaluation requirements at Q7-9, 11-14 below.)
- An impairment that is episodic or in remission is a disability if, when in an active phase, it would substantially limit a major life activity. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, a student with bipo disorder would be covered if, during manic or depressive episodes, the stude

TOP

substantially limited in a major life activity (*e.g.*, thinking, concentrating, neurological function, or brain function).

- For the "regarded as" prong of the disability definition, if an individual can establish that he or she has been subjected to an act prohibited by Title II or Section 504 (*e.g.*, refused admission or expelled or denied equal access to educational programs) because of an actual or perceived physical or mental impairment, then he or she is entitled to protection under these laws. The Amendments Act clarifies that the statutory protections apply whether or not the individual actually has the impairment, and also whether or not the impairment is perceived to be a substantial limitation on a major life activity.[7] *See* Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102). For example, consider a nondisabled student whose mother is a well-known AIDS activist in the community. After the student transfers schools at mid-year, he is harassed by other students based on their mistaken assumption that he has AIDS. This student, who is regarded as having an impairment, would be protected by the ADA and Section 504.[8]
- An individual will not be "regarded as" a person with a disability if the impairment is both transitory (meaning that it has an actual or expected duration of six months or less) and minor. Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).
- An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability *solely* because they are "regarded as" having a physical or mental impairment. *See* Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including but not limited to protection from retaliation and harassment on the basis of disability.

In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district's actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II.

Congress also expanded the definition of the term "major life activity." For a disc… of that term, see Question 6.

TOP

Q5: Should a school district revise its policies and procedures regarding the determination of coverage and provision of services under Section 504 and Title II?

A: Yes, if those policies and procedures do not implement the Amendments Act's new legal standards. As noted above, the definition of disability is to be interpreted broadly, so determining whether one has a disability should not demand extensive analysis, and the determination shall be made without regard to the ameliorative effects of mitigating measures. If a district determines that a student has a disability under these new legal standards, it must also evaluate whether, because of the disability, the student needs special education or related services as described in the Section 504 regulation. The school district must also determine whether additional requirements are implicated under Section 504 or Title II. If a district failed to implement the changes made by the Amendments Act, that district may be unlawfully denying Section 504 or Title II coverage to students.

Q6. Does the Amendments Act address the "major life activities" referred to in the Section 504 and Title II regulations?

A: Yes. The Amendments Act contains two nonexhaustive lists of major life activities. The first list expands the examples set forth in the ADA regulation at 28 C.F.R. § 35.104, and the second list provides examples of "major bodily functions" that are now considered major life activities under the law. The list of major life activities in the ADA now includes, but is not limited to:

- caring for oneself
- performing manual tasks
- seeing
- hearing
- eating
- sleeping
- walking
- standing
- lifting
- bending
- speaking
- breathing
- learning
- reading
- concentrating
- thinking
- communicating
- working[9]

TOP

The list of major bodily functions that are now considered major life activities includes, but is not limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *See* Amendments Act § 4(a) (codified as amended at 42 U.S.C. § 12102).[10]

The examples of major life activities in the Section 504 regulatory provisions, at 34 C.F.R. § 104.3(j)(2)(ii), predate the Amendments Act, and are not exhaustive. Because the definition of disability in the ADA applies to Section 504, all the examples of major life activities listed in the Amendments Act also constitute major life activities under Section 504.

Q7: Is learning the only major life activity that a school district must consider in determining if a student has a disability under Section 504 and Title II?

A: No. A student has a disability under Section 504 and Title II if a major life activity is substantially limited by his or her impairment. Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning. Learning is just one of a number of major life activities that should be considered in determining whether a student has a disability within the meaning of those laws. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3(j)(2)(ii). Some examples include: (1) a student with a visual impairment who cannot read regular print with glasses is substantially limited in the major life activity of seeing; (2) a student with an orthopedic impairment who cannot walk is substantially limited in the major life activity of walking; and (3) a student with ulcerative colitis is substantially limited in the operation of a major bodily function, the digestive system. These students would have to be evaluated, as described in the Section 504 regulation, to determine whether they need special education or related services. See Q9, below.

Therefore, rather than considering only how an impairment affects a student's ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student's equal opportunity to participate in the recipient's or public entity's program.

TOP

Q8: Does the Amendments Act affect a school district's obligation to provide a free appropriate public education as described in the Section 504 regulation?

A: No. The Amendments Act does not alter the school district's obligation to provide a free, appropriate public education (FAPE), as described in the Section 504 regulation; rather, it amends Section 504 to broaden the potential class of persons with disabilities protected by the statute. As specifically set out in the Section 504 regulation, local educational agencies that operate elementary or secondary education programs are required to provide FAPE to qualified individuals with disabilities who are in their jurisdiction. 34 C.F.R. §§ 104.3(l); 104.33.[11] FAPE is defined in the Section 504 regulation as the provision of regular or special education and related services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of nondisabled persons are met, and that are provided without cost (except for fees imposed on nondisabled students and their parents). 34 C.F.R. §§ 104.33(b)-(c).[12]

A school district's obligation to provide FAPE extends to students with disabilities who do not need special education but require a related service. For example, if a student with a disability is unable to self-administer a needed medication, a school district may be required to administer the medication if that service is necessary to meet the student's educational needs as adequately as the needs of nondisabled students are met. In order to satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students' parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36.[13]

Q9: How can a school district meet its obligation, as described in the Section 504 regulation, to evaluate students to determine the need for special education or related services consistent with the Amendments Act?

A: Although school districts may no longer consider the ameliorative effects of mitigating measures when making a disability determination, mitigating measures remain relevant in evaluating the need of a student with a disability for special education or related services. A school district must conduct an evaluation of a individual who because of a disability "needs or is believed to need" special educa

TOP

or related services. 34 C.F.R. § 104.35(a). An individual evaluation must be conducted before any action is taken with respect to the student's initial placement, or before any significant change in placement is made. 34 C.F.R. § 104.35. As explained in Q5, in determining if a student has a disability, the school district should ensure that it follows the expanded Amendments Act interpretation of disability, including the requirement that the ameliorative effects of mitigating measures not be considered. Once a school district determines that a student has a disability, however, that student's use of mitigating measures could still be relevant in determining his or her need for special education or related services.

The Section 504 regulation does not set out specific circumstances that trigger the obligation to conduct an evaluation; the decision to conduct an evaluation is governed by the individual circumstances in each case.

For example, consider a student who has Attention-Deficit/Hyperactivity Disorder (ADHD) but is not receiving special education or related services, and is achieving good grades in academically rigorous classes. School districts should not assume that this student's academic success necessarily means that the student is not substantially limited in a major life activity and therefore is not a person with a disability. In passing the Amendments Act, the managers of the Senate bill rejected the assumption that an individual with a specific learning disability who performs well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.[14] Thus, grades alone are an insufficient basis upon which to determine whether a student has a disability. Moreover, they may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades. Additionally, the Committee on Education and Labor in the House of Representatives cautioned that "an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability." *See* H.R. Rep. No. 110-730, pt. 1, at 15 (200

TOP

Some other examples of situations in which school personnel may reasonably conclude that a child needs or is believed to need special education or related aids and services include:

- when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed; or
- when the parent of a child has requested an evaluation.

Furthermore, the Section 504 regulation states that tests and other evaluation materials must be validated for the specific purpose for which they are used. 34 C.F.R. §104.35(b)(1). As discussed in Q7, a student may have a disability even if his or her impairment does not substantially limit learning, as long as the impairment substantially limits another major life activity. (That was true even before the Amendments Act was passed). For instance, in the ADHD example above, the school district must consider other major life activities that may be substantially limited by the student's ADHD. The Amendments Act provides illustrative lists of major life activities, such as concentrating, thinking, communicating, and neurological or brain functioning.

Q10: What should a school district do if it does not believe that a student needs special education or related services as described in the Section 504 regulation?

A: The Amendments Act does not alter the procedural safeguard requirements described in the Section 504 regulation. A school district should inform the student's parent or guardian of its decision and of the parent's or guardian's rights as set forth in 34 C.F.R. § 104.36. This provision requires a school district to establish a system of procedural safeguards for the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special education or related services. Parents and guardians must be told about this system, notified of any evaluation or placement actions, allowed to examine their child's records, afforded an impartial hearing with opportunity for representation by counsel, and provided a review procedure. Compliance with the procedural safeguards of the IDEA is one means of meeting this requirement. 34 C.F.R. § 104.36.

TOP

Even though a school district does not believe that a student needs special edu or related services, it must still consider whether the student is entitled to a reasonable

modification of policies, practices, or procedures. The extent of a school district's obligation to make reasonable modifications is fact-dependent and requires a case-by-case analysis. Examples of possible modifications include:

- allowing a student who has a physical disability based on a lung condition that substantially limits walking and mobility to use the faculty elevator because the student needs assistance in traveling between classes, even though the school rule generally prohibits student use of the elevator;
- allowing a student who has a record of a disability, based on a heart condition that has been corrected by surgery, the opportunity to complete, without penalty, assignments missed during the student's surgery and lengthy convalescence, even though the student was absent from school more than the school's attendance policy permits;
- providing or allowing the use of tactile chess sets and other adaptive materials and equipment so that a student with a visual disability can participate in the school's chess club.

Q11: What must a school district do for a student who has a disability but does not need any special education or related services?

A: As described in the Section 504 regulation, a school district must conduct an evaluation of any individual who, because of a disability, needs or is believed to need special education or related services, and must do so before taking any action with respect to the initial placement of the person in regular or special education or any significant change in placement. 34 C.F.R. § 104.35(a). If, as a result of a properly conducted evaluation, the school district determines that the student does not need special education or related services, the district is not required to provide aids or services. Neither the Amendments Act nor Section 504 obligates a school district to provide aids or services that the student does not need. But the school district must still conduct an evaluation before making a determination. Further, the student is still a person with a disability, and so is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements. *See* 28 C.F.R. § 35.130(b); 34 C.F.R. §§ 104.4(b), 104.21-23, 104.37, 104.61 (incorporating 34 C.F.R. § 100.7(e)).

TOP

For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.

Q12: Should school districts conduct FAPE evaluations as described in the Section 504 regulation for students who, prior to the Amendments Act, had health problems but might not have been considered persons with a disability?

A: The answer depends upon whether, because of the health problem, that student has a disability and, because of that disability, needs, or is believed to need, special education or related services. A medical diagnosis alone does not necessarily trigger a school district's obligation to conduct an evaluation to determine the need for special education or related services or the proper educational placement of a student who does have such need. As explained in Q11, a student with a disability may not need any special education or related service as a result of the disability.

Q13: Are the provision and implementation of a health plan developed prior to the Amendments Act sufficient to comply with the FAPE requirements as described in the Section 504 regulation?

A: Not necessarily. Continuing with a health plan may not be sufficient if the student needs or is believed to need special education or related services because of his or her disability. The critical question is whether the school district's actions meet the evaluation, placement, and procedural safeguard requirements of the FAPE provisions described in the Section 504 regulation. For example, before the Amendments Act, a student with a peanut allergy may not have been considered a person with a disability because of the student's use of mitigating measures (*e.g.,* frequent hand washi[illegible] bringing a homemade lunch) to minimize the risk of exposure. The student's scho[illegible]

TOP

may have created and implemented what is often called an "individual health plan" or "individualized health care plan" to address such issues as hand and desk washing procedures and epipen use without necessarily providing an evaluation, placement, or due process procedures. Now, after the Amendments Act, the effect of the epipen or other mitigating measures cannot be considered when the school district assesses whether the student has a disability. Therefore, when determining whether a student with a peanut allergy has a disability, the school district must evaluate whether the peanut allergy would be substantially limiting without considering amelioration by medication or other measures. For many children with peanut allergies, the allergy is likely to substantially limit the major life activities of breathing and respiratory function, and therefore, the child would be considered to have a disability. If, because of the peanut allergy the student has a disability and needs or is believed to need special education or related services, she has a right to an evaluation, placement, and procedural safeguards. In this situation, the individual health plan described above would be insufficient if it did not incorporate these requirements as described in the Section 504 regulation.

The nature of the regular or special education and related services provided under Section 504 must be based on the student's individual needs. As noted in Q2 above, the student would also be protected from discrimination under Title II's statutory and regulatory requirements, as well as Section 504's general nondiscrimination provisions.

Q14: Does the Amendments Act affect the situation in which a parent or guardian believes that his or her child has a disability and is not receiving special education or related services as described in the Section 504 regulation?

A: As stated in Q4 above, students who were in the past determined not to have a disability may now, in fact, be found to have a disability. If a parent or guardian of a child with an impairment believes that the child may be a student with a disability and therefore requires services that he or she is not currently receiving in school, the parent or guardian can ask the school district to evaluate or reevaluate the child pursuant to the requirements of the Section 504 regulation. The evaluation would determine whether the child has a disability, and, if so, whether the child needs special ed[illegible]n or related services. As noted in Q9 above, school districts must evaluate a child if that

TOP

child needs or is believed to need special education or related services because of a disability.

If, as described in the Section 504 regulation, a child is receiving special education or related services that the parent or guardian believes are inadequate, the parent or guardian can request changes to the educational placement. If agreement cannot be reached, the parent or guardian may invoke the procedural safeguards set forth in 34 C.F.R. § 104.36[15] to address the child's needs and current educational placement.

Q15: Does the Amendments Act require the Department to revise or create new Section 504 regulations to implement the Amendments Act?

A: No. The Amendments Act does not require the Department to revise its existing Section 504 regulation or to create new regulatory provisions. Although the legislative history of the Amendments Act suggests that some members of Congress believed that a new or revised Section 504 regulation may be appropriate, nothing in the Section 504 statute or current regulation contradicts the Amendments Act.[16] As noted in Q2 above, the Amendments Act includes a conforming amendment to ensure that the definitions of disability under Section 504 and the ADA are interpreted identically. The Department of Justice (DOJ) has stated that it will be working with federal agencies, including the Department, to revise their Section 504 regulations to expressly reflect the changes made by the Amendments Act and to provide guidance on their application. OCR continues to assess whether additional guidance or further publications are needed.

Q16: Does OCR's enforcement activity reflect the changes made by the Amendments Act?

A: Yes. OCR is enforcing Section 504 and Title II consistent with the changes to the legal standard made by the Amendments Act. Accordingly, OCR's enforcement reflects, for example, the broader interpretation of the definition of disability, the two nonexhaustive lists of major life activities, and the other Amendments Act requirements. The Amendments Act did not, however, alter OCR's case processing or the procedures that we use to investigate complaints, conduct compliance revie issue findings, and secure resolution agreements that remedy discriminatory po or

TOP

practices that we identify. For example, OCR will continue to follow the same procedures when addressing complaint allegations that a complainant files against the same school district with another Federal, state, or local civil rights enforcement agency or through a school district's internal grievance procedures. Additional information about OCR's case processing can be found in the OCR Case Processing Manual, available on our website at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html. Title II complaints against public entities, including school districts, may also be filed with DOJ. Additional information about filing a Title II complaint with DOJ may be found at www.ada.gov.

Q17: Where can I find additional information or receive technical assistance concerning Section 504 and Title II in light of the Amendments Act?

A: For further information about the Amendments Act and Section 504, please see "Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities," which can be found at http://www.ed.gov/about/offices/list/ocr/504faq.html. Also, OCR offers technical assistance to recipients in complying with Section 504, Title II, and the other civil rights laws that we enforce. If you need additional information or assistance on these or other matters, please visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm for the contact information for the OCR enforcement office that serves your state or outlying area. Additional technical assistance and guidance can also be found on the DOJ's website at www.ada.gov.

[1] The U.S. Department of Education has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at*: http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is bas… those laws and regulations. This letter does not add requirements to applicable la… but

TOP

provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

[2] As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II.

[3] ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

[4] 154 Cong. Rec. S8342, S8345 (daily ed. Sept. 11, 2008) (statement of the Managers).

[5] *See* Amendments Act, *supra* note 3, at § 7 (codified as amended at 42 U.S.C. § 12102).

[6] For the purposes of this document, when discussing Section 504, "related services" includes both related aids and related services.

[7] Congress believed that the functional limitation imposed by an impairment is irrelevant to the "regarded as" prong of the definition of disability. 154 Cong. Rec. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of Managers).

[8] When harassing conduct based on disability is sufficiently serious that it creates a hostile environment, thereby denying or limiting a student's ability to participate in or benefit from a school's education program, it violates a student's rights under Section 504 and Title II. A school is responsible for addressing student-on-student harassment about which it knows or reasonably should have known. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment. See Assistant Secretary for Civil Rights Russlynn Ali's "Dear Colleague" letter to recipients of Federal financial assistance concerning obligations to protect students from student-on-student harassment, *available at* http://www2.ed.gov/about/offices/list/ocr/letters/colle[illegible]-201010.html.

TOP

[9] The EEOC's regulations implementing the Amendments Act, as it applies to employment, add reaching, sitting, and interacting with others as other examples of major life activities. *See* Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, *as amended*, 76 Fed. Reg. 16,978, 17,000 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630) (EEOC Regulations).

[10] *See* EEOC Regulations, at 17,000 (adding special sense organs and skin, as well as functions of the cardiovascular, genitourinary, hemic, lymphatic, and musculoskeletal systems as examples of major bodily functions, and stating that these functions include the operation of an organ within a bodily system).

[11] The appendix to the Section 504 regulation clarifies that if a school district places a student with a disability in a program other than its own, the school district remains financially responsible for the student with a disability, whether or not the other program is operated by a different school district or educational agency. 34 C.F.R. pt. 104, App. A § 104.33 at 407 (2010).

[12] For a discussion of obligations to provide FAPE under the IDEA, please visit http://idea.ed.gov/.

[13] Please see Q10 for further discussion of Section 504 procedural requirements in the FAPE context.

[14] *See* 154 Cong. Rec. S8342, 8346 (daily ed. Sept. 11, 2008) (statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008).

[15] Please see Q10 above for further discussion of Section 504's procedural safeguards.

[16] For example, OCR interprets the Section 504 regulatory language defining "is regarded as having an impairment" in a manner that is consistent with the analysis described in the Amendments Act.

TOP

Top

Office for Civil Rights (OCR)

Page Last Reviewed: January 14, 2025

Pay for College

- Fill out the FAFSA
- 529 Plans
- Loan Forgiveness
- 1098 Tax Forms

Educational Resources

- 504 Plans
- FERPA
- IEPs (Individualized Education Program)

Teaching Resources

- Become a Teacher
- Professional Resources
- School Safety and Security
- Teaching Abroad

File a Report

- Report Fraud, Waste, or Abuse
- Report a Civil Rights Violation

TOP

Student Privacy Complaint Forms

About Us

Contact Us

ED Offices

Overview of ED

Frequently Asked Questions (FAQs)

Jobs at ED

News

Press Releases

Homeroom Blog

Subscriptions

Site Notices and Privacy Policies

Accessibility Support

ED Archive

U.S. Department of Education

ES

Contact Us
1-800-USA-LEARN

www.ed.gov

An official website of the Department of Education

TOP

Office of the Inspector General Performance reports FOIA Privacy Policy

ED Archive

Looking for U.S. government information and services? **Visit USA.gov**

TOP